

COURT FILE NUMBER 1901-12669

COURT COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) KAILLIE HUMPHRIES

DEFENDANT(S) BOBSLEIGH CANADA  
SKELETON

DOCUMENT AMENDED STATEMENT OF  
CLAIM

Clerk's Stamp
CLERK OF THE COURT <b>FILED</b> <b>SEP 16 2019</b> JUDICIAL CENTRE OF CALGARY

ADDRESS FOR SERVICE AND CONTACT  
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CLERK OF THE COURT

AMENDED this 16 day of  
Sept 2019 Pursuant to  
Rule 3.62  
Dated the 16 day of Sept, 2019

**NOTICE TO DEFENDANT:**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**The Parties:**

1. The Plaintiff, Kaillie Humphries (the "Plaintiff"), is 34 years old and is an individual residing in the United State of America, previously resident of the municipal district of Foothills, in the Province of Alberta.
2. The Defendant, Bobsleigh Canada Skeleton (the "Defendant"), is the National Sport Organization that governs all activities pertaining to the sport of bobsleigh and skeleton in Canada.
3. The Plaintiff has been a bobsleigh athlete for 15 years and has competed in three Winter Olympic Games and is the only two time back to back Olympic Gold Medalist in the history of the sport.

**Statement of facts relied on:**

4. The Plaintiff filed a complaint pursuant to the Defendant's *Discrimination and Harassment Policy*, section 10, subsections (a) and (g), and subsection 14(b) regarding verbal and mental abuse by the Head Coach, Todd Hays, during the 2017/2018 season.
5. Mr. Hays breached his contract with the Defendant and the Defendant has breached its contract with the Plaintiff by demonstrating or allowing behaviour contrary to the definition of harassment outlined in section 10 of the Defendant's *Discrimination and Harassment Policy*:

Harassment can take many forms but generally involves conduct, comment or display that is insulting, intimidating, humiliating, hurtful, demeaning, belittling, malicious, degrading or otherwise cause[s] offence, discomfort or person humiliation or embarrassment to a person or a group of persons.

Specially subsections (a) "Hostile verbal and non-verbal communications"; and (g) "Acts of retaliation designed to punish an individual who has reported discrimination or harassment."

6. Subsequent to the Plaintiff filing her complaint, the Plaintiff learned that Mr. Hays is the subject of several open complaints by members of the United States national bobsleigh team with regard to Mr. Hays both physically and verbally abusing female athletes who are members of the United States Bobsled and Skeleton Federation. The Plaintiff specifically pleads that the Defendant was negligent in hiring Mr. Hays as Head Coach of the Canadian National Bobsleigh Team without conducting adequate due diligence with regard to the outstanding complaints against Mr. Hays with regard to physical and verbal abuse committed by Mr. Hays against female members of the United States Bobsled and Skeleton Federation.
7. During the World Cup event held in Park City, Utah on November 17 and 18, 2017, Mr. Hays lost his temper at a meeting about video review of team dynamics and screamed abusive comments at the Plaintiff in the presence of witnesses in conflict with section 10 of the *Discrimination and Harassment Policy*.
8. On December 6, 2017, the Plaintiff approached Mr. Hays at the top of the bobsleigh track about acquiring a pair of team pants to wear on the podium, and he verbally abused the Plaintiff contrary to section 10 and subsection 10(a) of the *Discrimination and Harassment Policy* and the Defendant's *Coaches Code of Conduct* which states that coaches should "refrain from public criticism of athletes". Mr. Hays verbally insulted the Plaintiff and humiliated her to a group of persons contrary to the Defendant's *Discrimination and Harassment Policy*.
9. On December 13, 2017, in Igls, Austria during a World Cup event, the Plaintiff texted Mr. Hays about needing a 60 minute massage rather than the 30 minute massage the therapist said the Plaintiff was allowed. Mr. Hays claimed to take offence to the Plaintiff's lack of concern for the needs of other athletes and told

the Plaintiff to get a massage from the women's skeleton therapist instead. The Plaintiff met Mr. Hays at the hotel to discuss the matter further. Mr. Hays began to raise his voice and told the Plaintiff that she wasn't above the team and did not need more time. Contrary to section 10 and subsection 10(a) of the *Discrimination and Harassment Policy*, and the *Coaches Code of Conduct*, Mr. Hays verbally insulted the Plaintiff in front of members of the media, the International Bobsleigh and Skeleton Federation, and the United States national bobsleigh team.

10. Following the encounter with Mr. Hays in the hotel, the Plaintiff left and went to a restaurant where the President of the Defendant, Sarah Storey, was eating dinner. The Plaintiff was crying and provided Ms. Storey notice of the harassment she had been suffering and requested to go home. The Plaintiff recounted her discussion with Mr. Hays and what he had said to her. Ms. Storey asked the Plaintiff what she needed in order to stay and perform in the World Cup event. The Plaintiff told Ms. Storey she wanted nothing to do with Mr. Hays ever again. Ms. Storey responded by saying that wasn't possible because Mr. Hays was the Head Coach. The Plaintiff told Ms. Storey she got yelled at every time she spoke to Mr. Hays, that there was no communication, respect or trust between them, and that if this is how he makes athletes feel by yelling demeaning things and verbally abusing them in a public setting, the Plaintiff could not be around him.
11. On February 2, 2018, during the opening ceremonies for the Olympic Winter Games, the Plaintiff noticed Mr. Hays running up and down the aisles giving items away to the Finnish team. Mr. Hays sat down and started yelling down at the other team members and staff to join him. According to the Plaintiff, it was apparent from his demeanor and behavior that he had been drinking and was intoxicated contrary to the *Coaches Code of Conduct*, which states that coaches shall "refrain from the abuse of alcohol or tobacco when representing [the Defendant]".
12. On May 7, 2018, the Plaintiff met with Ms. Storey for seven hours to debrief on the closing season. The Plaintiff discussed all the incidents with Mr. Hays and explained her feelings. Ms. Storey agreed that the Plaintiff should seek professional help. About Mr. Hays, Ms. Storey said: "he's not going anywhere; he's the Head Coach so you're going to have to find a way to deal with it."
13. During end-of-season debriefs with members of the Defendant, the Plaintiff mentioned Mr. Hays had been drunk at the opening ceremonies, that he yelled at her when she asked questions, he played favourites with other athletes, and verbally abused the Plaintiff in Igls, Austria. The Plaintiff related that she felt upset and never knew which version of Mr. Hays she would encounter.
14. On July 7, 2018 the Plaintiff received an email from Ms. Storey inviting her to a meeting that would include Mr. Hays. The Plaintiff replied that she was not willing to speak with him and clarified that on numerous occasions she had spoken with the Defendant's leaders and coaching staff about his verbal and mental abuse,

abuse of power, personal public embarrassment, and inappropriate behavior with female athletes.

15. In their failure to take appropriate action once they had become aware of the harassment, Ms. Storey and Chris Le Bihan, the High Performance Director, were in violation of subsection 14(b) of the *Discrimination and Harassment Policy*: “[The Defendant’s] participants should: Exercise good judgement and initiate appropriate action under this policy, if they become aware that discrimination or harassment may have occurred.”
16. On August 22, 2018, the Plaintiff filed a harassment complaint with the Defendant, stating that Mr. Hays, Ms. Storey and Mr. Le Bihan are in breach of the Defendant’s *Discrimination and Harassment Policy*.
17. In accordance with Section 26 of the *Discrimination and Harassment Policy*, the Defendant’s Board of Directors appointed Dr. Stephen Norris, Vice-President, and Mr. Cody Sorensen, Bobsleigh Athlete Representative, as co-officials to process the complaint. The Defendant also engaged Dylan Hill, Vice-President of Hill Advisory Service, as the independent investigator to oversee to the complaint.
18. The Plaintiff signed the Athlete Agreement for the 2018/2019 season and paid the 2018-2019 National Team Athlete Membership Fee. The Athlete Agreement between the Plaintiff and the Defendant expired on June 30, 2019.
19. Although the Plaintiff paid the requisite fees and signed the Athlete Agreement, after filing the harassment complaint with the Defendant on August 22, 2019, the Plaintiff was not contacted by the Defendant to complete the required selection process for the 2018/2019 National Bobsleigh Program. As a result, the Defendant did not nominate the Plaintiff for the National Bobsleigh Program Carding Cycle “In-Season Allocation” from November 1, 2018 to June 30, 2019. This resulted in the Plaintiff being ineligible for Sport Canada’s Athlete Assistance Program or the Canadian Athlete Insurance Program causing her economic losses and losses of sponsorship. As well as damage to her brand and reputation as a top rank Olympic Gold Medalist.
20. On October 7, 2018, the Plaintiff announced that she would be forced to not race for the 2018/2019 season because of the harassment she had suffered at the hands of the Defendant and employees.
21. In March 2019, the Plaintiff spoke with the Defendant’s brakeman Kristen Bujnowski, who said she would push the Plaintiff if she was part of the Defendant organization.
22. On May 21, 2019, the Plaintiff sent a letter to the Defendant outlining her desire to return to competition subject to certain conditions.
23. The Plaintiff was not invited by the Defendant to attend either of the 2019 training camps for the Bobsleigh National Team. Nor did the Defendant confirm the return to competition protocol. Per the Athlete Agreement, athletes are required to



- participate in all National Team selection events and training programs. By excluding her from the camps, the Defendant deliberately jeopardized the Plaintiff's opportunity to return to competition to pursue her career.
24. After the Defendant's summer camp in July 2019, the Plaintiff spoke with brakeman Kristen Bujnowski to confirm that she would push the Plaintiff during selections. Ms. Bujnowski informed the Plaintiff that she could not push her because she was told by the Defendant that if athletes choose to support the Plaintiff they will be out of favour with the Defendant's coaches and their Olympic standing would be in question.
  25. The Plaintiff was also told that if she returned to compete for the Defendant, she would be punished by receiving an older 2011 sled, which was not at all competitive at a world level and in fact raised serious concerns given the age and condition of the equipment.
  26. On August 3, 2019, the Plaintiff sent a letter to the Defendant requesting a release letter by September 1, 2019. It is the Plaintiff's intention to be released from the Defendant so that she can compete this season for the Women's National Bobsleigh Team with the United State Bobsled and Skeleton Federation ("USBSF").
  27. For the Plaintiff to compete for the USBSF for the 2019/2020 season, the International Bobsleigh & Skeleton Federation ("IBSF") requires a release letter from the Defendant and an acceptance letter from USBSF by September 30, 2019. On September 6, 2019, the USBSF provided the IBSF with a letter confirming that the Plaintiff has been accepted to represent USA Bobsled/Skeleton in IBSF competitions pending her release from the Defendant.
  28. On August 22, 2019, Mr. Norris, the Vice-President for the Defendant, advised the Board of Directors met and discussed the Plaintiff's request for release from the Defendant and made the decision to defer consideration of the request for release until the independent investigation matter is concluded.
  29. The Plaintiff was invited by the USBSF to attend the push trials on September 18, 2019 in order to qualify for the Women's Bobsled National Team. The Plaintiff is unable to attend without a release letter from the Defendant.
  30. To date the Defendant has willfully refused to provide the required release.
  31. As a result of the conduct of the Defendant, the Plaintiff has suffered and continues to suffer monetary damages in the form of loss of reputation, sponsorships, revenue opportunities including branding opportunities and economic losses.
  32. The refusal to provide a release to allow the Plaintiff to compete for Team USA is harmful to the Plaintiff's career and can not be compensated for in damages.
  33. All of the actions of the Defendant described above following the expiration of the Plaintiff's 2018/2019 contract constitute a violation of s. 10(g) of the Plaintiff's

Discrimination and Harassment Policy, insofar as the failure to respond to Ms. Humphries' letter of May 21, 2019, by not advising Ms. Humphries that the Defendant would not agree to anything other than standard contractual terms; not inviting her to training camps; advising her team mate Kirsten Bujnowski that her Olympic status would be in jeopardy if she trained or competed with the Defendant and refusing to provide a release which is normally provided as a matter of course, all of which conduct is punitive and a violation of s. 10(g) of her previous contract with the Defendant.

34. The refusal to grant the release constitutes a tortious interference with the Plaintiff's ability to contract with USBSF.
35. Through all of its action and inaction, with regard to its failure to take necessary steps to allow the Plaintiff to compete as a member of the Defendant and in refusing to grant a release to the Plaintiff to compete for USBSF, the Defendant has acted negligently and in a manner not consistent with its obligations to the Plaintiff.

**Remedy sought:**

WHEREFORE THE PLAINTIFF CLAIMS JUDGEMENT AGAINST THE DEFENDANT AS FOLLOWS:

36. An Injunction requiring the Defendant to release the Plaintiff to compete for USBSF;
37. General damages in the amount of \$15,000,000.00 or such other amount as may be proven at trial;
38. Damages for economic loss in the amount of \$15,000,000.000 or such other amount as may be proven at trial;
39. Damages for lost income and loss of future earning capacity in the amount of \$15,000,000.00 or such other amount as may be proved at trial;
40. Special damages in an amount to be determined at trial;
41. Interest pursuant to the Judgement Interest Act, R.S.A. (1980), c. J-0.5;
42. Costs in an amount as this Honourable Court may deem just; and
43. Such further and other relief as may seem just to this Honourable Court.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.